IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
Writ Petition No.3874 of 1997

Soheb Saleh Paloba & Anr. .. Petitioners

Vs.

Safdar Ahmed Tungekar & Ors. .. Respondents

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Shri A.K.Abhyankar, Sr.Counsel, for the petitioners.

Shri R.V.Govilkar for the respondent Nos.1 and 2.

Shri C.R.Sonawane, AGP for the respondent No.3.

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CORAM : R.M.S.KHANDEPARKAR &
S.R.SATHE, JJ.

DATED : 21ST APRIL, 2006

P.C.

1. Heard the learned advocates for the petitioners and the respondents.

2. This petition arises from the order dated 30th May, 1997 passed by the Joint Charity Commissioner, Mumbai. The grievance of the petitioners was that the trustees were trying to alienate the trust property without following the due process of law and in contravention of the Trusts Act and to the prejudice of the Trust. Inspite of the said fact being brought

to the notice of the Joint Charity Commissioner, the same was not only totally ignored but strange observations were sought to be made in the impugned order to the effect that no loss would be caused to the Trust if the property is alienated by private negotiations and the sanction in that regard is obtained after finalisation of the said negotiations. As the procedure is unknown to the law in force and applicable to the Trust property, the petitioner is justified in making grievance against the impugned order and seeking setting aside of the said order and further direction in the form of prayer clause (b). In fact, the interim order in that regard was passed on 18th February, 1997 at the time of issuance of the rule in the petition. Till this date, no attempt has been made to seek modification or vacation of the said interim order.

3. The learned advocate appearing for the respondents however has fairly stated that the trustees do not intend to alienate the property otherwise than in accordance with the provisions of law. In view of the said statement, in fact, it is not necessary to go into the various contentions sought to be raised on behalf of the petitioners. Suffice to observe that the trust property cannot be

alienated at the whims and fancies of the trustees but a proper care and caution has to be taken to ensure transparency in the entire process of alienation of the trust property as well as to ensure that maximum price is obtained while alienating the property. For this purpose, naturally, it would be required to make public an intention of the trustees regarding sale of the property, without such public notice, the trust property should not be alienated. Being so, no prejudice will be caused in setting aside the impugned order and continuing the interim order which was granted at the time of issuance of rule. Suffice to observe that injunction will not come in the way of the trustees to alienate the properties by following due process of law and whenever it is absolutely necessary in the interest of justice.

4. With these observations, the rule is made absolute in terms of prayer clauses (a) and (b). There shall be no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(S.R.SATHE, J)